

Applicant: Berckmans, et al.
Serial No.: 10/567,610
Filing Date: March 5, 2007
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Response to Non-Final Office Action mailed August 18, 2010
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REMARKS

The Non-Final Office Action mailed August 18, 2010 has been carefully considered. Claims 1-29 are currently pending in the application, although Claims 1-11 are now withdrawn from consideration. By the amendments presented herein, Applicants have currently amended Claims 12-14 and 20-22. Claim 12 has been amended to clarify that the temperature of the eggs is measured while they are arranged in the incubator, which element of the claims is referred to on line 2 of the claim, but now repeated to define more precisely where the egg is disposed during the temperature measurement. The further amendments are intended to clarify aspects of applicants' invention already defined by the claims. The amendments to the claims are not intended to overcome any particular prior art cited or included in a rejection in the subject Office Action. Accordingly, no new matter is presented by the amendments herein. Applicants address the further issues raised in the subject office action below.

Objection to the Specification:

The Abstract of the Disclosure is objected to due to minor informalities as well as not being directed to the elected claims. Accordingly, Applicants have hereby amended the Abstract using the language from currently pending Claim 12. Accordingly, Applicants respectfully request reconsideration and withdrawal of this objection.

Claim Rejections under 35 U.S.C. §112:

Claims 14 and 20-26 are rejected under 35 U.S.C. §112, second paragraph as being indefinite. With regard to Claim 14, Applicants have hereby deleted the term "the" before the word "holders" in order to avoid the pending antecedent basis rejection. Similarly, in Claim 21, the expression "the climate conditions" is amended to read just "climate conditions" in order to avoid the antecedent issue. Additionally with regard to Claim 21, the reference to method steps has been removed in order to clarify that the claim terms further define an apparatus that

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performs the recited functions. With regard to the rejection to Claim 26, it should be noted that the expression “at least one of compartments and nests” does not require antecedent basis as it is calling out new elements not previously referred to in the claims. Thus, as Applicants have addressed all of the indefiniteness elements identified in the Office Action, reconsideration is respectfully requested herein.

Claim Rejections under 35 U.S.C. §102 and §103:

Claims 12, 14-20 and 29 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,427,844 to Hebrank. Additionally, claims 27 and 28 are rejected under 35 U.S.C. §103 as being unpatentable over Hebrank. Applicants respectfully traverse these rejections.

One aspect of Applicants’ invention is that of controlling and measuring the living environment where eggs are hatched, while minimizing any disturbance to the eggs or the environment in which they are in. This aspect is defined in the claims by indication that the thermometer reads the temperature around an egg through a contactless measurement, while it is disposed in the incubator. This aspect allows the eggs to be minimally disturbed while measurements are taken, particularly during the hatching period.

In contrast, Hebrank relates to a method and apparatus for classifying a plurality of poultry eggs for discriminating between live eggs capable of hatching non-live or empty eggs. In this respect, Hebrank transports eggs to be classified by a conveyor between a first measurement point for measuring capacity of the eggs (candling) and second measurement point measuring the temperature of the eggs. (See Hebrank, column 7, line 36 – column 8, line 8.) Thus, in Hebrank, the eggs are removed from their hatching environment, namely an incubator, in order for the temperature testing and even the administration of injections to be performed. In this manner, the living space of the eggs during the hatching period is substantially disturbed.

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In contrast, Claim 12 defines that that during the hatching period each individual thermometer contactlessly measures the temperature around a corresponding individual egg arranged in the incubator. This aspect is clearly not disclosed or reasonably suggested by Hebrank. With regard to the particular comments in paragraph 13 of the Office Action regarding the obviousness rejection, it should be noted that there is no teaching or suggestion in Hebrank to calibrate thermometers according to hatching chambers because Hebrank does not disclose measuring the egg temperatures while in hatching chambers. But more specifically, since Hebrank does not disclose measuring and/or testing the eggs while in the incubator, it would not have been obvious to one of ordinary skill to arrive at the claimed invention based on the disclosure of Hebrank.

Accordingly, Hebrank fails to disclose all of the elements of the claimed invention. Also, it would not have been obvious to one of ordinary skill to arrive at the claimed invention based on the disclosure of Hebrank. Thus, Applicants respectfully request reconsideration and withdrawal of this rejection at this time.

Allowable Subject Matter:

Applicants appreciate and acknowledge the Examiner's indication of allowable subject matter contained in Claim 13. Accordingly, Claim 13 has been rewritten in independent form by the amendments herein. Similarly, Claims 21-26 were indicted as being allowable and have been amended to overcome the rejections under 35 U.S.C. §112, second paragraph. Accordingly, allowance of these claims is respectfully requested.

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Conclusion

Entry of the amendments herein and favorable consideration of Claims 12-29 is hereby solicited. Additionally, should Claims 12-29 be held allowable, Applicants respectfully request rejoinder of Claims 1-11 in accordance with 37 CFR 1.104.

In view of the foregoing remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner has any questions or suggestions to expedite allowance of this application, he is cordially invited to contact Applicant's attorney at the telephone number provided.

Respectfully submitted,

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